

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JONES,

Defendant-Appellant.

UNPUBLISHED

March 15, 2005

No. 252193

Wayne Circuit Court

LC No. 03-003588-01

Before: Murray, P.J., and Markey and O'Connell, JJ.

MEMORANDUM.

Defendant appeals as of right from the order denying his motion for a new trial following his jury trial conviction for possession of a firearm during the commission of a felony (felony firearm), MCL 750.227b. Defendant was sentenced to two years imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court abused its discretion when it denied defendant's motion for a new trial because after the verdict a juror alleged that the jury misunderstood the court's instruction on felony firearm. We disagree. The Michigan Supreme Court addressed the issue of a juror's ability to challenge a verdict in *People v Budzyn*, 456 Mich 77, 91; 566 NW2d 229 (1997), which states:

Generally, jurors may not impeach their own verdict by subsequent affidavits showing misconduct in the jury room. As the Court of Appeals has previously noted, once a jury has been polled and discharged, its members may not challenge mistakes or misconduct inherent in the verdict. Rather, oral testimony or affidavits may only be received on extraneous or outside errors, such as undue influence by outside parties. As the United States Supreme Court has explained, the distinction between an external influence and inherent misconduct is not based on the location of the wrong, e.g., distinguished on the basis whether the "irregularity" occurred inside or outside the jury room. Rather, the nature of the allegation determines whether the allegation is intrinsic to the jury's deliberative process or whether it is an outside or extraneous influence. In examining these affidavits, a trial court should not investigate their subjective content, but limit its factual inquiry to determining the extent to which the jurors saw or discussed the extrinsic evidence. [Citations omitted.]

The juror in the case at bar alleged that the jury misunderstood the trial court's instruction for felony firearm. Nevertheless, any misunderstanding was inherent in the verdict and did not result from extraneous influence. *People v Fletcher*, 260 Mich App 531, 539; 679 NW2d 127 (2004). Therefore, the trial court did not abuse its discretion in denying defendant's motion for a new trial.

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Peter D. O'Connell